Decision **DRAFT DECISION OF ALJ BEMESDERFER (Mailed 3/23/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Crimson California Pipeline, L.P., pursuant to Section 817 and Section 851 of the Public Utilities Code for authority to issue evidences of indebtedness and to encumber public utility property.	Application 06-01-002 (Filed January 5, 2006)

O P I N I O N

Summary

Crimson California Pipeline, L.P. (Applicant or Crimson) seeks *nunc pro tunc* authority for the issuance of approximately $4 million in debt secured by a lien on public utility property. We grant the requested authority on a prospective basis only, subject to the terms and conditions herein, and impose a fine of $5,000 for violation of Pub. Util. Code §§ 818 and 830.

Background

Applicant is a California limited partnership authorized to do business in the State of California. Its general partner is Crimson Pipeline Management, Inc., a California corporation, whose parent, Crimson Resource Management Corp. (CRMC), a Colorado corporation, currently operates in excess of thirty petroleum production properties located in four different California counties, with the bulk of its operations in Kern County. Crimson is a public utility, subject to the Commission's jurisdiction pursuant to Pub. Util. Code § 216. Specifically,

Crimson is a pipeline corporation as defined by Pub. Util. Code § 228, which owns and operates certain oil pipeline facilities in southern California.

In Decision (D.) 05-04-006, we authorized Crimson to acquire the following public utility assets from Shell California Pipeline Company, LLC (Shell): (1) the Ventura 10" crude line, (2) the Thums common, (3) the Filmore to Ventura 8" line (active from the Sespe tie-in to Ventura), (4) the Ventura gathering line (C&D Block, San Miguelito), and (5) a portion of the Brea East line (about one mile of active pipe). Certain idle public utility assets were acquired by Crimson from Shell at the same time, including (1) a portion of the Brea East line (idle from Leffingwell/Imperial to Site Dr/Central), (2) the Newhall-to-Ventura line (idle from Newhall to the Sespe tie-in), (3) the Ventura gathering line, and (4) the Van Nuys-to-Ventura products line.

The book cost of the regulated and unregulated assets together is $7,941,000. The original cost of the unregulated assets alone is unknown.

Following the issuance of D.05-04-006, Crimson, its general partner and an affiliated partnership, Cardinal Pipeline, L.P. that owns and operates non-public-utility pipeline assets in California, entered into a Credit Agreement with the Bank of Oklahoma (BOK). The three Crimson entities are co-borrowers under the Credit Agreement, which calls for BOK to extend up to $4 million in revolving credit with any outstanding loan due and payable May 1, 2010. The Credit Agreement further provides that BOK may, at its sole discretion, increase the maximum credit available from $4 million to $10 million. Four million dollars in credit has been extended to date.

The co-borrowers, including Applicant, signed a note to BOK evidencing the indebtedness. The Credit Agreement also requires the debtors to pledge

assets to secure the note. Applicant has signed the note but has not pledged any public utility assets as security.

Crimson states that it was aware that it had to obtain our approval before pledging public utility assets to secure a debt, but was unaware that it had to obtain our approval before signing a note without a concurrent pledge of assets. Crimson now recognizes that both the execution of the promissory note and the proposed pledge of public utility property require our prior approval and are void in the absence of such approval. Crimson also recognizes that it needs our prior approval before entering into a co-borrowing arrangement with entities that are not public utilities subject to our jurisdiction. Crimson's application recites that in the future it will neither enter into a financing arrangement on its own or with others without first obtaining our approval.

Given that the purpose of the financing was to obtain money to maintain and improve public utility transportation services, Crimson now asks for *nunc pro tunc* approval of the void financing. It further asks that we waive any penalty for non-compliance with the Public Utilities Code because the violations were inadvertent and had no adverse impact on Crimson's public utility operations.

Discussion

The application includes a copy of the void financing agreement previously entered into and the related security agreement. If we approve Crimson's execution of these agreements, whether *nunc pro tunc* or prospectively, all of Crimson's public utility assets will be pledged as security for the loan. While Crimson, its general partner and its affiliated company are co-borrowers on the void note and would continue as co-borrowers under a credit arrangement approved by us, the application does not make clear whether either

of the other entities has tangible assets that could be realized by the creditor in the event of a default on the note, nor does the agreement require the creditor to look first to the other assets of the co-borrowers before foreclosing on Crimson's public utility assets. The application does make clear that the Shell assets purchased by Crimson have a book value substantially below the maximum loan that might be extended by BOK pursuant to these arrangements.

On the other hand, Crimson's balance sheet as of September 2005 shows long-term debt of $2,493,000; total indebtedness of $3,434,000; and a positive net worth of $2,220,000. Current assets exceed current liabilities by $387,000. Thus, even with a portion of the void debt obligation on its books, Crimson appears to be a financially solvent entity capable of paying its debts as they come due.

Applicant acknowledges that a pledge of public utility assets to secure a note to BOK without our approval would be void under the terms of Pub. Util. Code § 851.[1] Execution of the note, without the pledge of assets, also required our prior approval under the terms of Pub. Util. Code § 818.[2] Because Applicant is jointly liable on the note with its unregulated affiliates, it was also required to

[1] "No public utility…shall sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its…line, plant, system, or other property necessary or useful in the performance of its duties to the public…without first having secured from the commission an order authorizing it to do so. Every such sale, lease, assignment, mortgage, disposition, [or] encumbrance…made other than in accordance with the order of the commission authorizing it is void."

[2] "No public utility may issue…notes or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless…it shall have first secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which…the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order."

obtain our prior approval of such joint liability pursuant to Pub. Util. Code § 830.[3] Notwithstanding this failure to comply with multiple provisions of the Public Utilities Code, Applicant asks us to retroactively validate the transaction. This we are unable to do. Applicant and its counsel should have known that financing public utility assets requires prior Commission approval. Given Applicant's apparent financial solidity, there is little doubt that we would have granted approval had it been sought. But we see no reason to reward bad behavior. Whatever negative consequences may flow from our refusal to retroactively sanction this agreement are for Applicant to deal with.

We will grant approval of the transaction on a prospective basis. Applicant is authorized to encumber its public utility assets pursuant to a set of financing documents in substance equivalent to the credit agreement, note and mortgage attached to the application in Exhibits 4 and 5. Though it should be unnecessary to do so, we add that any significant deviation from the form or substance of those documents should be brought to our attention and our approval should be sought in advance of entering into agreements that differ in any material way from those attached to the application.

We grant this approval recognizing that Applicant and its co-borrowers have already borrowed $4 million from BOK. Both the bank and the co-obligors would have state law remedies against Applicant in the event we denied the

[3] "No public utility shall assume any obligation as guarantor, endorser, surety, or otherwise in respect of the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without having first secured from the commission an order authorizing it to do so. Every such assumption made other than in accordance with the order of the commission authorizing it is void."

application *in toto.* We see some possible harm and no benefit to creating future uncertainty about its financing arrangements.

We have considered whether any purpose is served by imposing a fine in addition to refusing to grant retroactive authority for this transaction. Applicant failed to comply with §§ 818 and 830 by jointly executing a promissory note without Commission authorization. These violations are subject to monetary penalties under § 2107 which states that any public utility that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars nor more than twenty thousand dollars for each offense.

For the following reasons, we conclude that Crimson should be fined for its failure to comply with §§ 818 and 830. First, any unauthorized borrowing, regardless of the circumstances, is a serious offense that should be subject to fines. Second, the imposition of a fine will help to deter future violations of by Crimson and others.

Ignorance of statutes as fundamental to practice before this Commission as §§ 818 and 830 is no excuse for failing to comply with their requirements. On the other hand, the violations were unintentional. Crimson called them to our attention and has pledged to abide by our statutes and rules in the future.

In keeping with our practice in cases involving unintentional violations of the prohibition against unapproved changes in control in § 854(a), we will impose a fine $5,000 in this case. *See e.g.,* D.06-01-003, *Decision Granting Approval of the Transfer of Control of FreedomStarr Communications, Inc. to AmericanFone, LLC.*

Categorization and Need for Hearings

In Resolution ALJ 176-3165, dated January 12, 2006, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3165.

Comments on Draft Decision

The draft decision of the administrative law judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Karl Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Applicant's violations of §§ 818 and 830 were inadvertent.
2. Applicant did not file the application before the transaction took place.
3. In analogous cases, the Commission has fined utilities for inadvertent failures to obtain advance approval under § 854(a) for transfers of control.
4. A notice of the filing of the application appeared in the Daily Calendar on January 10, 2006.
5. There were no protests to this application.
6. A hearing is not required.
7. This proceeding should be closed.

Conclusions of Law

1. The application should be granted to the extent set forth below.

2. The purpose of § 818 is to enable the Commission to review a proposed utility borrowing before it takes place in order to take such action as the public interest may require.

3. The purpose of § 830 is to enable the Commission to review a proposed utility guaranty of indebtedness of another before it is executed in order to take such action as the public interest may require.

4. Granting the application on a retroactive basis would thwart the purposes of §§ 818 and 830.

5. The application should be denied to the extent it requests retroactive authority for Crimson's borrowing from BOK.

6. Since the Commission's approval of the application is prospective only, the Credit Agreement between Crimson and BOK is void under § 825 for the period of time prior to the effective date of this decision, and Crimson is at risk for any adverse consequences that may result from having entered into the Credit Agreement without Commission authority.

7. Applicant failed to comply with § 818 by entering into a borrowing transaction without Commission authorization.

8. Applicant failed to comply with § 830 by entering into a joint and several obligation without Commission authorization.

9. Violations of §§ 818 and 830 are subject to monetary penalties under § 2107 of not less than five hundred dollars, nor more than twenty thousand dollars for each offense.

10. Any violation of §§ 818 and 830, regardless of the circumstances, is a serious offense that should be subject to fines.

11. Applicant should be fined $5,000 for violating §§ 818 and 830.

12. The application should be granted to the extent set forth herein.

13. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Crimson California Pipeline, L.P. is authorized to execute a Credit Agreement with the Bank of Oklahoma for up to $4 million in revolving credit with any outstanding loan due and payable May 1, 2010. The Credit Agreement may also provide for an increase in the maximum credit available from $4 million to $10 million at the sole discretion of the Bank of Oklahoma.

2. The Credit Agreement previously entered into between Crimson California Pipeline, L.P. and the Bank of Oklahoma with terms and conditions substantially equivalent to those approved in this order is void.

3. Crimson shall pay a fine in the amount of $5,000 for violating Pub. Util. Code §§ 818 and 830. Crimson shall pay the fine within 20 days from the effective date of this order by tendering to the Fiscal Office of the California Public Utilities Commission a check in the amount of $5,000 made payable to the State of California General Fund.

4. Application 06-01-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.